



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2011-0978]

RIN 1625-AA00

Safety Zone; Temporary Change for Recurring Fireworks

Display within the Fifth Coast Guard District, Wrightsville
Beach, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final rule.

SUMMARY: The Coast Guard is temporarily changing the enforcement period and location of safety zone regulations for a recurring fireworks display within the Fifth Coast Guard District. These regulations apply to only one recurring fireworks display event that takes place at Wrightsville Beach, NC. Safety zone regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of Motts Channel and Banks Channel near Wrightsville Beach, NC, during the event.

DATES: This rule is effective from 5:30 p.m. to 8:30 p.m. on November 26, 2011, except that amendatory instruction 2a suspending entry (d)10 in § 165.506, Table to §165.506, is

effective November 20, 2011 through November 26, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2011-0978 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-0978 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Chief Warrant Officer Joseph Edge, Prevention Department, Coast Guard Sector North Carolina, Atlantic Beach, NC; telephone 252-247-4525, e-mail Joseph.M.Edge@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity

to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing an NPRM is impracticable and contrary to public interest since immediate action is needed to minimize potential danger to the public during the event. The Coast Guard did not receive notification of date change for this event in sufficient time to issue an NPRM and hold a comment period for this rulemaking. The potential dangers posed by fallout from pyrotechnic fireworks displays to vessel traffic transiting the waterway makes this safety zone necessary to provide for the safety of spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event. The Coast Guard will issue broadcast notice to mariners to advise vessel operators of navigational restrictions. On scene Coast Guard and local law enforcement vessels will also provide actual notice to mariners.

Under 5 U.S.C. 553(d)(3), and for the same reasons, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Delaying the effective date would be

contrary to the public interest, since immediate action is needed to ensure the safety of the event participants, spectator craft and other vessels transiting the event area.

Background and Purpose

Fireworks display events are frequently held on or adjacent to navigable waters within the boundary of the Fifth Coast Guard District. For a description of the geographical area of each Coast Guard Sector - Captain of the Port Zone, please see 33 CFR 3.25.

This regulation temporarily changes the enforcement period and geographic location of the safety zone for one recurring marine event, described at (d)(10) of the Table to 33 CFR 165.506, that is normally scheduled to occur each year on the fourth Monday in November. This year, the event will take place on the 4th Saturday, November 26, 2011.

On November 26, 2011, the North Carolina Holiday Flotilla at Wrightsville Beach, NC will sponsor the "2011 NC Holiday Flotilla boat parade and fireworks". The event will take place near Wrightsville Beach, NC on the waters of Motts Channel and Banks Channel. The regulation at 33 CFR 165.506 is enforced annually for this event. The event will consist of approximately 40 sailboats and powerboats participating in a parade in the vicinity of the Wrightsville Beach, North Carolina and conclude with a fireworks display. Also, a fleet of spectator vessels is

expected to gather near the event site to view the parade and fireworks. To provide for the safety of participants, spectators, and transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area from 5:30 p.m. to 8:30 p.m. on November 26, 2011. The regulation at 33 CFR 165.506 will be enforced for the duration of the event. Vessels may not enter the regulated area unless they receive permission from the Coast Guard Patrol Commander.

Discussion of Rule

The Coast Guard is temporarily changing the enforcement period and geographic location of the safety zone for this recurring event within the Fifth Coast Guard District. This regulation applies to only one marine event listed at (d)10 in the Table to § 165.506.

The Table to § 165.506, event (d)10 establishes the enforcement date and geographic location for the "North Carolina Holiday Flotilla". This regulation temporarily changes the enforcement date from the fourth Monday in November to Saturday, November 26, 2011 and the location to latitude 34°12'19" N, longitude 077°48'16" W. The temporary safety zone will be enforced from 5:30 p.m. to 8:30 p.m. on November 26, 2011, and will restrict general navigation in the regulated area during the event. The North Carolina Holiday Flotilla, which is the sponsor for this event, holds this event annually; however, they have changed the date of

the event for 2011 so that it is outside the scope of the existing enforcement period. Except for participants and vessels authorized by the Coast Guard Patrol Commander, no person or vessel will be allowed to enter or remain in the regulated area. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Although this rule prevents traffic from transiting a portion of Motts Channel and Banks Channel during the

specified event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts, local radio stations and area newspapers so mariners can adjust their plans accordingly. Additionally, this rulemaking does not change the permanent regulated areas that have been published in 33 CFR 165.506, Table to § 165.506. In some cases vessel traffic may be able to transit the regulated area when the Coast Guard Patrol Commander deems it is safe to do so.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to

transit or anchor in Motts Channel or Banks Channel where this event is being held. This regulation will not have a significant impact on a substantial number of small entities because it will be enforced only during the event that will be patrolled by the Coast Guard patrol commander. The Captain of the Port will ensure that small entities are able to operate in the areas where events are occurring when it is safe to do so. In some cases, vessels will be able to safely transit around the regulated area at various times, and, with the permission of the Patrol Commander, vessels may transit through the regulated area. Before the enforcement period, the Coast Guard will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each

agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will

not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian

tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials,

performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This rule establishes a safety zone. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast

Guard amends 33 CFR part 165 as follows:

PART 165-- REGULATED NAVIGATION AREAS AND LIMITED ACCESS
AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Amend § 165.506 as follows:

a. From November 20, 2011 through November 26, 2011 in § 165.506, Table to §165.506, suspend entry (d)10.

b. From 5:30 p.m. to 8:30 p.m. on November 26, 2011, in § 165.506, Table to § 165.506, add entry (d)(14) to read as follows:

§ 165.506 Safety Zones; Fifth Coast Guard District
Fireworks Displays

(d) Enforcement period. * * *

No.	Date	Location	Regulated Area
* 14.	* November 26, 2011.	* Motts Channel, Banks Channel, Wrightsville Beach, NC, Safety Zone.	* * All waters of Motts Channel within a 300 yard radius of latitude 34°12'19" N, longitude 077°48'16" W, a position located on the east end of Bird Island, Wrightsville Beach, NC.

Dated: October 20, 2011

Anthony Popiel
Captain, U.S. Coast Guard
Captain of the Port North Carolina

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Date: 11/09/2011]